



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/811,345

03/26/2004

Russell Bonaventura

LEAP:135US

1573

7590 01/17/2008
C. Paul Maliszewski, P.E.
Simpson & Simpson, PLLC
5555 Main Street
Williamsville, NY 14221-5406

EXAMINER

PRITCHETT, JOSHUA L

ART UNIT

PAPER NUMBER

2872

MAIL DATE

DELIVERY MODE

01/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RUSSEL BONAVENTURA,
PAUL M. HARRISON, KENNETH M. NORTHEM,
and SCOTT W. PARKS

Appeal 2007-2994
Application 10/811,345
Technology Center 2800

Decided: January 17, 2008

Before KENNETH W. HAIRSTON, ROBERT E. NAPPI,
and KARL D. EASTHOM, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 2-34 and 36-52. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

BACKGROUND

The disclosed invention relates generally to microscopy, and more specifically to an apparatus for the dissipation of heat away from an illumination source of a microscope. The claims are directed to a microscope having a baffle or baffle assembly and an air inlet. The baffle or baffle assembly is located proximate to the air inlet. The baffle or baffle assembly is operatively arranged to deflect or divert air entering the microscope via the inlet and to occlude the emanation of light from said microscope through said air inlet.

Claims 4 and 15 are illustrative of the claims on appeal:

4. A microscope comprising:
 - an air inlet;
 - an illumination source;
 - a heat sink assembly with a baffle located proximate said air inlet;
 - a lens secured to said heat sink assembly; and,
 - a plurality of fins formed at said heat sink assembly, where said plurality of fins is operatively arranged to conduct heat away from said illumination source and to transfer said heat to air passing by or over said assembly, where said baffle is operatively arranged to deflect air entering said microscope via said inlet and to occlude the emanation of light from said illumination source through said air inlet, and where said heat sink assembly and said lens are arranged to protect, from all directions, said illumination source from direct physical intrusion from outside said microscope.

15. A microscope comprising:
 - an air inlet; and,

a fixed baffle assembly located proximate said air inlet and operatively arranged to divert air entering said microscope via said inlet and to occlude the emanation of light from said microscope through said air inlet.

The References

Messinger	US 5,076,660	Dec. 31, 1991
Chin	US 5,295,052	Mar. 15, 1994
Rauen	US 6,698,200 B1	Mar. 2, 2004

Rejections Appealed

Claims 2-12, 14-24, 26-34, 36-43 and 46-52 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chin in view of Messinger.

Claims 13, 25, and 44-45 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chin in view of Messinger, further in view of Rauen.

Appellants contend that the Examiner failed to make out a prima facie case of obviousness due to the lack of motivation to combine Chin and Messinger and because the combination does not teach all of the claim limitations (Br. 8, 13,14). Appellants do not separately argue the rejected claims; thus we group all of the rejected claims together. We recognize that independent claims 15, 30, 51, and 52 are broader than claim 4, but because the claims involve the same issues and were not separately argued, we take claim 4 as representative of the claims on appeal. *See* 35 C.F.R. § 41.37(c)(1)(vii).

Issue

The issue is whether Appellants have met their burden on appeal of asserting error in the Examiner's obviousness rejection of claim 4 under 35

U.S.C. § 103 based on the combination of Messinger and Chin.

We affirm.

PRINCIPLES OF LAW

On appeal, Appellant bears the burden of showing that the Examiner erred. Appellant may sustain this burden by showing that, where the Examiner relies on a combination of disclosures, the Examiner failed to provide sufficient evidence to show that one having ordinary skill in the art would have done what Appellant did. *United States v. Adams*, 383 U.S. 39, 47 (1966); *In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006); *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick, Co.*, 464 F.3d 1356, 1360-61 (Fed. Cir. 2006).

Appellant may also show that the Examiner has failed to meet his initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellants to overcome the prima facie case with argument and/or evidence. *See Id.*

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d at 988 (Fed. Cir. 2006).

[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result....

....

...For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* and *Anderson's-Black Rock* are illustrative – a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1740 (2007).

FINDINGS OF FACT

1. Appellants state: “The present invention relates generally to microscopy, more specifically to an apparatus for the dissipation of heat away from the illumination source of a microscope, and, even more particularly, to a heat sink assembly for a microscope.” (Spec. 1: 10-13).

2. By way of background, Appellants explain that:

Microscopes have long used sources of light...for the illumination of objects prior to their magnification....

An inherent problem in the operation of modern microscope illumination systems is the necessity to dissipate, in a safe and harmless manner, the heat energy generated by the illumination

systems. Agencies such as Underwriters Laboratory (UL) have determined maximum permissible surface temperatures for laboratory instruments. However, many light sources commonly used in microscopes create temperatures well above the permissible temperatures. For example, tungsten halogen bulbs can reach temperatures of 250°C under normal operating conditions. If the heat generated by a light source is allowed to transfer directly through the microscope base, the temperature of the base surface may exceed the abovementioned maximum temperature

The emission of light from a microscope into the ambient surroundings also is undesirable. Photomicrography demands the suppression of ambient light to obtain a quality photomicrograph. Due to the requirement of air exchange for heat dissipation, an area on the microscope near the illumination source is typically vented. Unfortunately, in addition to air exchange, venting also may allow light to escape. The escaping light can enter the optical system and degrade image quality....Therefore, it can be seen that any ambient light, even light which emanates from the base of the microscope, is undesirable during the image capture process.

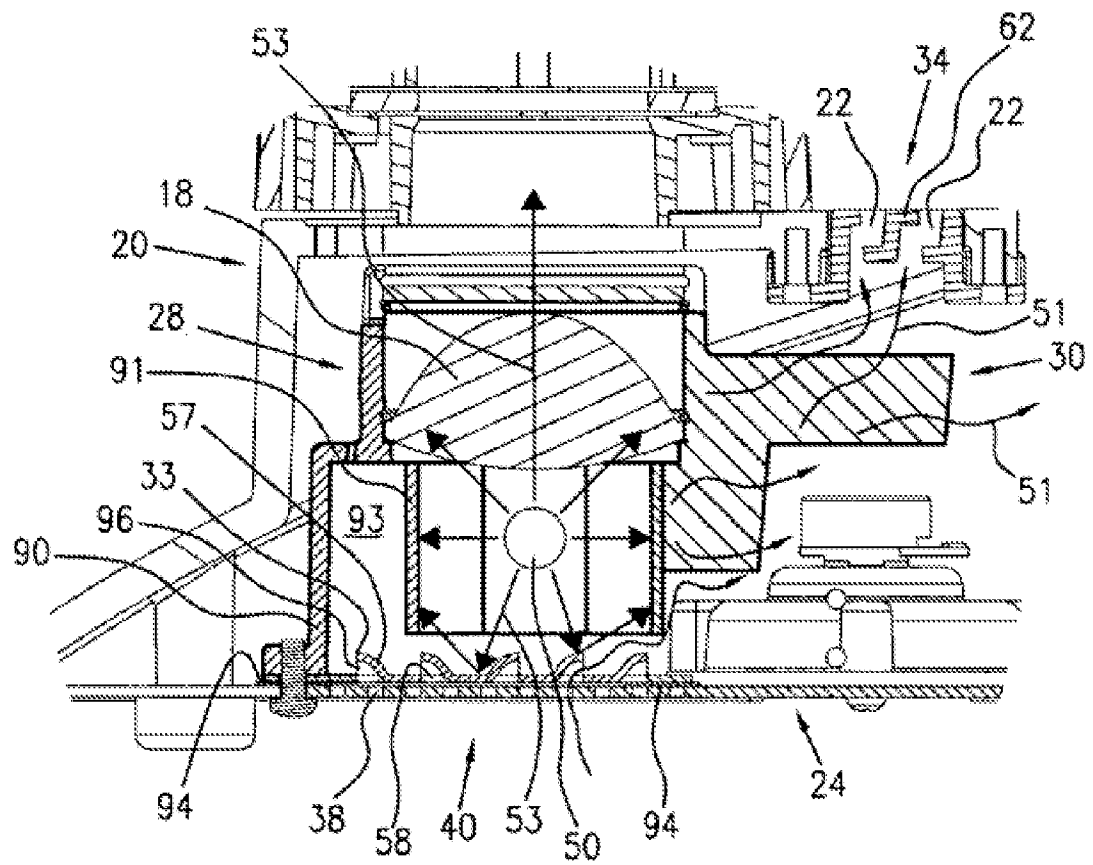
(Spec. 1:20 to 2:21.)

3. Appellants' explain their system depicted at Fig. 7a as follows:

Concurrently, the shape of baffles 57... *in combination with a [sic] the relative position of slots 58 and 38, blocks light emanating from bulb 50* and prevents this light from exiting through slots 38. That is, slots 38 and 58 and baffles 57 are aligned such that baffles 57 block the direct path through the slots for light emanating directly from bulb 50 or reflecting from surfaces of lamp assembly 21 or baffles 57... [T]he relative positions between slots 58 and 38 include a lateral displacement between slots 58 and 38.

(Spec. 6: par. 0024)(emphasis supplied).

Appellants' Fig. 7a is reproduced below.



Appellants' Fig. 7a depicts light emanating from a light source 50 and deflecting from baffles 57 (Spec.: Fig. 7a).

4. Messinger discloses “instruments [that] use a light guide to transmit light from an external light source unit through the instrument to illuminate the internal area to be inspected.” (Col. 1, ll. 23-25). Two such instruments, videoscopes and fiberscopes, are flexible and employed so that an inspector can see an area without disassembling or cutting apart an object enclosing the area. Videoscopes and fiberscopes each relay an image from a distal tip back to an eyepiece. Fiberscopes employ a fiberoptic image bundle to relay an image from an objective lens at a distal tip of the instrument back to the eyepiece, while videoscopes employ a miniature CCD chip television camera at its tip to relay the image. Another disclosed instrument is the borescope which is rigid and employs a series of lenses similar to a telescope. (Col. 1, ll. 9-22).

5. Messinger describes a trend in the industry toward smaller instruments with light sources that carry more light. The trend requires higher intensity light sources that create “enormous amounts of heat” generate “excessive temperatures,” possibly “cause serious burns on the fingers,” and also “present a fire hazard.” (Col. 1, ll. 33-54).

6. Messinger's system includes a fan 7, heat sinking coupler 5, heat baffles 19, and air foil shutter 15 to reduce excessive heat from light sources in instruments such as fiberscopes, borescopes, and videoscopes (col. 1, ll. 9-42; col. 2, ll. 54-66).

7. Messinger denotes air channels as baffles:

The channels 11a are shown as elongated air baffles that present a greater surface area to cool [an] air stream. The elongated shape should transfer heat away from the fiberoptic coupler 5 more efficiently. It is appreciated that the maximum heat dissipation in the fiberoptic coupler shown in either FIGS. 2 or 3 occurs along lower passages 11b because they receive the coolest air...Alternatively, the air passage could be formed as direct passages through the coupler so that air flow is not obstructed by the right angle turn between passages 11a and 11b.

(col. 3, ll. 13-26) (emphasis supplied).

8. Messinger's Fig. 1 is reproduced below in modified form.

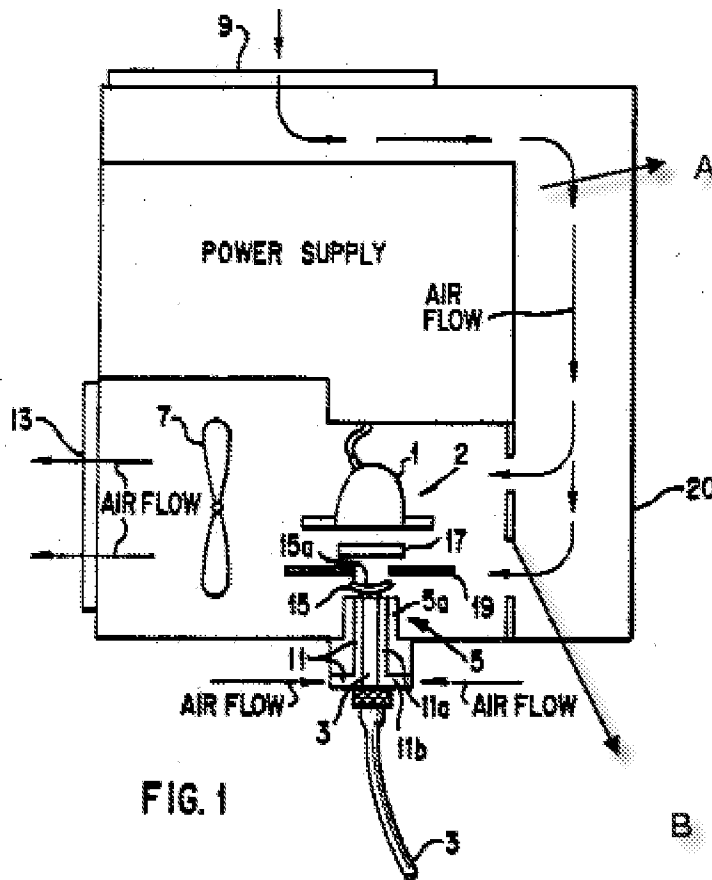


Fig. 1 depicts the flow path of air to and around the light in Messinger's system. This figure has been modified to include reference lines to denote an air channel as "A" and baffles/partitions as "B."

Messinger's system depicted above includes light source 1, guide 3 (transmitting light from light source 1), coupler 5, air intake 9, cooling channels 11, air foil shutter 15, lens arrangement 17, heat baffle 19, air channel A, and baffles B (col. 2, ll. 54-66, col. 3, ll. 13-26, Fig. 1).

9. Messinger's air foil shutter 15 is described as a Venturi nozzle regulating the flow of air through channels 11 located in coupler 5 (col. 1, l. 60 to col. 2, l. 2; col. 3, ll. 2-11, Figs. 2-3). The Examiner denotes the shutter

15 as a baffle and Appellants do not contest the characterization (Ans. 5). The baffle 15 automatically shuts as the guide 3 is removed, preventing light from lamp 1 from entering the center of coupler 5 as a safety feature to prevent direct light from hitting an operator's eyes. Lens 17 operates with baffle 15 to focus light from lamp 1 only on the center of coupler 5 and into light guide 3 (col. 3, ll. 28-51, Fig. 1, Fig. 4). Baffles 15 and 17 are close to air inlets 11 (Fig. 1).

10. Chin discloses that light sources for medical/surgical applications such as endoscopic viewing or surgery are well known (abstract, col. 1, ll. 6-10). Chin describes an industry desire to obtain minimal dimensions and powerful light sources for surgical equipment, creating a trade-off between size and power whereby heat dissipation principals must be employed in order to place powerful lamps in small spaces while eliminating substantial heat (col. 1, ll. 34-40).

11. Chin's system employs a "video camera seeing the field of view illuminated from the source" and which controls the light intensity via feedback (col. 3, ll. 34-41). The system is cooled through a system of fans, baffles and heat sinks (abstract, col. 2, ll. 54-58; col. 3, ll. 42-44).

ANALYSIS

Appellants' argument that the Examiner fails to establish a prima facie case of obviousness for claim 4 is based on three contentions: 1) that Messinger does teach that the "baffle is operatively arranged ... to occlude the emanation of light from said illumination source through said air inlet"

because the baffles do not occlude light (Br. 8-11); 2) that Messinger's baffles are not proximate the air inlet (Br. 11-12); and 3) that there is no suggestion or motivation to combine the references (Br. 12-14). We address each argument in turn below.

We do not find the contentions persuasive for the reasons that follow. Regarding Appellants' first contention, we agree with the Examiner that that Messinger's baffles B are operatively arranged to occlude light from exiting the air inlet 9.¹ Under a first alternative interpretation, we consider Messinger's channel structure A and baffle B to be one baffle which we denote here as baffle AB.² We base our finding that the whole portion AB is a baffle by first noting that channel A and the baffles B are connected directly together. Together the baffle AB passes, deflects and channels air from the air inlet 9 to the lamp (see Fig. 1, FF 8). We further note Messinger specifically denotes the channels 11a as baffles (FF 7). Channels 11a and 11b together create ninety degree turns, and pass and obstruct the flow of air for cooling (FF 7, 8). Therefore, since Messinger's channel A also has ninety degree turns and passes, obstructs and channels air for

¹ We conclude that Messinger's air inlet 9 meets the claim's air inlet since each allow air to enter an instrument and where we also note no dispute exists as to this element.

² As noted above (FF 8), we have modified Messinger's Fig. 1 by designating the passageway as A and the baffles as B for purposes of discussion. The passageway A and baffles B are the same passageway and baffles in Messinger Fig. 1 about which Appellants and the Examiner argue (Br. 8, 11). For example, the Examiner states "the partitions are baffles" (Advisory Action, August 14, 2006) and Appellants quote the Examiner (Br. 11).

cooling in cooperation with baffle B, we find that the channel A is a baffle portion which we consider to be part of the baffle B.³

We also conclude that the baffle AB meets the claim limitation of “operatively arranged...to occlude light.” Appellants do not directly challenge this conclusion.⁴

For similar reasons, under a second alternative interpretation related to the first interpretation, we agree with the Examiner that the baffles B meet the claim 4 limitation of “operatively arranged to ...to occlude the emanation of light from said illumination source through said air inlet.” Under this second interpretation, we conclude, like the Examiner, that the baffles B in cooperation with the channel A, are operative to occlude light and thus meet the claim. We are unpersuaded by Appellants’ contention that Messinger’s baffles by themselves must occlude light to meet the claim. The issue under this second alternative interpretation turns on what the claim phrase “operatively arranged” means.

Appellants explain that “rather than reciting ‘said baffle deflects air’... [t]he claims recite ‘said baffle is operatively arranged to deflect air.’”

³ The term “baffle” is defined as follows: “A [usually] static device that regulates light or the flow of a fluid.” (Webster’s II New Riverside Dictionary (1994)). We find the definition (combined with Messinger’s teachings) supports our finding that A is part of the baffle AB since the baffles AB regulate the fluid air via the several turns in the air channel A.

⁴ Appellants state “assuming *arguendo* that light is occluded from inlet 9, that occlusion would be a result of the configuration of the passage between the partitions [i.e., baffles B] and the inlet [i.e., channel A] and the changes in direction for a light beam dictated by this configuration.” (Br. 10)(emphasis original).

(Reply Br. 8). We interpret Appellants' explanation of the meaning of "operatively arranged" as an assertion that the phrase lacks meaning or is superfluous. We do not find the explanation persuasive. The plain meaning of the phrase "operatively arranged" indicates that the baffles are arranged in operation with another element to occlude light. Therefore, the Examiner's explanation that the baffles B are operatively arranged with Messinger's channel A comports with the plain meaning.⁵ Moreover, Appellants did not amend the claims during prosecution to overcome the Examiner's construction. "Construing claims broadly during prosecution is not unfair to the applicant...because the applicant has the opportunity to amend the claims to obtain more precise claim language." *In re American Academy of Science Tech. Center*, 367 F.3d 1359, 1369 (Fed. Cir. 2004).

Appellants' argument that the Examiner's determination regarding the cooperation between the baffles and the channel amounts to an improper incorporation of limitations from Appellants' Specification into the claim is not persuasive. We determine that the Examiner's claim interpretation, allowing for structural cooperation between the baffles and the channel, and thereby not requiring the baffles to occlude light by themselves, is a broad reasonable interpretation that is consistent with the specification. "[D]uring examination proceedings, claims are given their broadest reasonable

⁵ As stated above, see n. 4, Appellants do not directly challenge the finding that Messinger's baffles B in cooperation with channel A occlude "the emanation of light... through said air inlet" 9.

interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

That is, we find that Appellants’ baffles 57, *by themselves*, do not prevent *all the light* from passing through the slots 58 (between the baffles), but, rather, operate in combination with the slots 38 in base plate 35 to block light from exiting the air inlet 40 (FF 3). Appellants’ statement supports our finding: “Concurrently, the shape of baffles 57... *in combination with a [sic] the relative position of slots 58 and 38, blocks light emanating from bulb 50* and prevents this light from exiting through slots 38.” (FF 3). Therefore, we conclude as did the Examiner that Messinger’s baffle B meets the claim limitation in dispute because it operates in cooperation with the channel A to occlude light.

Appellants’ related arguments that “significant” amounts of light would exit Messinger’s baffles B absent the cooperation of channel A (Br. 9) and that “the baffle does not occlude light in and of itself” are not persuasive (Reply Br. 8 (emphasis original)). For reasons explained above, Appellants’ claims, reciting “operatively arranged,”⁶ do not require the

⁶ Claim 30 recites “said baffle occludes the emanation of light” but Appellants have not separately argued the claim. Moreover, the baffle AB meets the claim under our first alternative interpretation.

baffle “in and of itself”⁷ to occlude “significant”⁸ amounts of light. We do not consider Appellants’ argument that Messinger’s baffles allow a significant amount of light to pass to constitute an argument as to what Appellants’ claims require (Br. 9).

Under a third alternative interpretation, we also determine that Messinger’s baffle 15 meets the claim limitation “said baffle is operatively arranged to deflect air entering said microscope via said inlet and to occlude the emanation of light from said illumination source through said air inlet.” That is, we determine the baffle 15, when it is closed or when it is open, is operable to occlude the emanation of light from lamp 1 through the air inlet 11, and also to deflect air entering the channel 11 (FF 9). We find that light

⁷ Appellants’ support their argument that “[their] baffle ... occlude[s] light in and of itself” by asserting that “[t]he specification does not teach any other feature of the microscope performing this function.” (Reply Br. 8). Our finding (FF 3) directly contradicts Appellants’ assertion because we find it is the cooperation between the slots in base plate 35 and slots 58 between the baffles that is necessary to occlude light.

⁸ Appellants’ argument that their baffles occlude light while Messinger’s do not may be based on the amount of light occluded as implied by their argument that Messinger’s baffles pass a “significant” amount of light (Br. 9). However, Appellants make no direct argument that their claims require the baffle to occlude a certain amount of light. We also note an element of confusion introduced by Appellants who state Messinger’s baffles may “limit” the light, but do not “attenuate” the light (Br. 9). It is incumbent on Appellants to define terms of degree if those terms are relied upon to distinguish the claims particularly and distinctly over close prior art. *Cf. Amgen, Inc. v. Chugai Pharmaceutical Co., Ltd.*, 927 F.2d 1200, 1218 (Fed. Cir. 1991) (holding claims invalid as unclear under 35 U.S.C. § 112 2nd par. - reasoning patentee failed to define how the relative term “about” defined over close prior art).

from lamp 1 does not enter channel 11 due to the lens 17 and baffle 15. The lens 17 focuses light on the center of coupler 5 (FF 9). The baffle 15 opens and closes to allow light to hit and not hit, respectively, the center of the coupler 5 (FF 9). Therefore, we determine that the baffle 15 is operable with the lens 17 to occlude the light from emanating through the inlet 11, meeting the claim limitation in dispute.

Turning to Appellants' second contention that Messinger's baffles B are not proximate the air channel A, we determine that Appellants' contention is not persuasive. Under our first alternative interpretation described above, the baffles B include the channel A as part of the baffles. A portion of the channel A directly contacts and is immediately adjacent Messinger's air inlet 9. Similarly, under our third alternative interpretation described above, we determine the baffle 15 to be proximate the air inlet 11 as it is depicted to be immediately above the channels 11 (FF. 8, 9). Consequently, we conclude that Messinger's baffles AB or baffle 15 meets the claim limitation proximate.

We also determine under our second alternative interpretation described above, that Messinger's baffles B are proximate Messinger's air inlet 9 under the plain meaning of the word "proximate." That is, we find Messinger's baffles B to be very close in "order" or "time" to Messinger's air inlet because air entering the channel via the inlet quickly encounters the baffles B.⁹ Our interpretation is consistent with Appellants' disclosure since

⁹ Appellants' related argument (Br. 12) that Messinger teaches against the baffles being located proximate the air inlet because the baffles B act as a

Appellants baffles are close in order or time and also consistent with the plain meaning of proximate as evidenced by a dictionary definition.¹⁰

We turn now to Appellants' third contention - that there is no motivation to arrive at the claimed invention. Appellants provide three separate rationales to support their third contention.

The first rationale is that "Messinger [is not] analogous to the present invention" (Br. 12). We determine the first rationale to be unpersuasive. That is, we find that Appellants' and Messinger's disclosures either involve the same field of endeavor or a solution to the same particular problem; i.e., both disclosures are concerned with removing large amounts of heat generated from light sources in small instruments employing lenses and/or cameras to aid viewing of items illuminated by the light source (FF 1, 2, 4, 6). We consequently do not consider either the pertinent prior art or field of endeavor to be limited to microscopes even if the claims are.

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one.

"partial pre-filter" for the passageway is not persuasive since a "pre-filter" suggests a location near the inlet or anywhere prior to the light chamber. Further, because we find Messinger discloses the proximate relationship, the "teaching away" rationale does not apply. *See e.g. In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994) ("A reference may be said to teach away when a person of ordinary skill ... would be discouraged from following the path set out in the reference.")

¹⁰ The term "proximate" is defined as: "1. Closely related in space, time or order." (Webster's II New Riverside Dictionary (1994). This definition is consistent with Appellants' definition (Br. 11), because "very near" is interpreted as "very near" in time or order.

....

...Under the correct analysis, any need or problem known in the field of endeavor at the time of the invention and addressed in the patent [or application] can provide a reason for combining the elements in the manner claimed.

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1740, 1742 (2007). *See also Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 1580 (Fed. Cir. 1983)(scope of pertinent prior art not limited to pacemakers but also includes electronics involving battery voltage sensing).

We also do not find persuasive Appellants' second rationale that Chin does not suggest a microscope (Br. 14). As Appellants acknowledge (Br. 15), the Examiner asserted:

Chin does state that the device is used for medical/surgical applications (abstract). It is extremely well known in the art to use microscopes in combination with light sources for medical/surgical applications. Official Notice is taken....It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Chin light source used in combination with a microscope as suggested by Chin for the purpose of allowing surgery to be performed on parts of the body too small to be easily observed with the naked eye.

(Ans. 6).

We determine to be reasonable the Examiner's rationale for combining Chin's known prior art techniques with prior art microscopes; i.e., the rationale that Chin's devices (FF 10) and prior art microscopes each employ illumination sources and each are used in medical or surgical applications to aid in viewing small items. We note that Appellants' do not

directly challenge the Examiner's taking of Official Notice regarding the well-known use of microscopes having light sources in medical/surgical applications. We also note Appellants' admission that "[m]icroscopes have long used sources of light...for the illumination of objects prior to their magnification." (FF 2). We conclude that the use of Chins' system in microscopes results in no more than the predictable use of prior art elements according to their established function of the desirable cooling of hot illuminating light sources in small instruments employed for viewing small objects.

Appellants' final rationale that Chin and Messinger are not combinable is based on their assertion that "adding Messinger's baffles to Chin can only restrict the air flow between Chin's air inlet and light source, reducing the cooling efficiently." (Br. 14)(emphasis original). We do not find the rationale persuasive because we find no factual basis to support the assertion that cooling efficiency would suffer as a result of the proposed combination. To the contrary, Chin's structure discloses or suggests baffles between the air inlet and light source. That is, Chin's light source 34 is surrounded by the fins on heat sink 36 "providing heat sinking to an airflow passing therethrough" (col. 2, l. 57, fig. 5). We find Chin's fins on heat sink 36 are located between the light source 34 and the air inlet (i.e., fans 112) (the light is directed through an aperture 46 surrounded by the heat sink 36 fins via light path 82 and finally through light cable connectors 94 (col. 3, ll. 21-23, 42-44, 53-62, fig. 5)). We determine Chin's fins to be baffles since they provide heat-sinking for the heat from the light source 34 and are

cooled as air passes over the fins (col. 2, ll. 54-62). Accordingly, we find that Chin discloses baffles between the light source and the air inlet. Chins' system cools light sources in small instruments used to aid in viewing objects in surgery or medical applications (FF, 10, 11). Consequently, similar to our finding above, we find the use of Messinger's baffles in Chin's system to result in no more than the predictable use of prior art elements according to their established function of the desirable cooling of hot illuminating light sources in small instruments employed for viewing objects.

CONCLUSION

Appellants fail to meet the burden of asserting error in the Examiner's rejection. *See United States v. Adams*, 383 U.S. at 47 (1966); *In re Kahn*, 441 F.3d at 987-88 (Fed. Cir. 2006); *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick, Co.*, 464 F.3d at 1360-61 (Fed. Cir. 2006). Based on the arguments made in the Brief and Reply Brief, we have no basis for questioning the findings of the Examiner. Appellants have not sustained their burden on appeal of showing that the Examiner erred in rejecting the claims on appeal as being unpatentable under 35 U.S.C. § 103(a).

Accordingly, we sustain the Examiner's rejection of claim 4. Appellants have not separately argued claims 2-3, 5-34 and 36-52. Therefore, we also sustain the Examiner's rejections of claims 2-3, 5-34 and 36-52.

DECISION

The decision of the Examiner is *affirmed*.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

Appeal 2007-2994
Application 10/811,345

KIS

C. Paul Maliszewski, P.E.
Simpson & Simpson
555 Main Street
Williamsville, NY 14221-5406